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PENNSYLVANIA—NEW ENGLAND

L. M. T. & P. C. N. E.
THEIR RELATION TO THE MOST EFFECTIVE
PRINCIPLE OF FEDERATION EMBODIED
IN THE AMERICAN CONSTITUTION

AN ADDRESS BY

SENATOR PHILANDER C. KNOX

AT A BANQUET
OF THE
NEW ENGLAND SOCIETY OF PENNSYLVANIA
DECEMBER 23, 1907
AT PHILADELPHIA

Press of
The Law Reporter Printing Company
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Mr. Toastmaster and Gentlemen:

Of the Constitution of the United States, Alexis de Tocqueville said, in his work on Democracy in America :

“This Constitution, which may at first be confounded with federal constitutions that have preceded it, rests in truth upon *a wholly novel theory which may be considered a great discovery in modern political science*. In the confederations that preceded the American Constitution of 1789, the allied States, for a common object, agreed to obey the injunctions of a federal government; but they reserved to themselves the right of ordaining and enforcing the execution of the laws of the Union. The American States, which combined in 1789, agreed that the federal government should not only dictate, but should execute its own enactments. In both cases the right is the same, but the exercise of the right is different; and this difference produced the most momentous consequences.”

This “wholly novel theory which may be considered

a great discovery in modern political science" is admirably explained and its authorship confidently asserted in an article upon "The Designer of the Constitution," by my good and learned friend, Dr. Hannis Taylor, published in the *North American Review* on August 16, 1907, from which I quote the following passages:

Mr. Taylor says:

"In a recent issue of the Chicago *Record-Herald*, Mr. William E. Curtis, after looking over the antiquities of Hartford, presented an interesting sketch of Noah Webster, in which he said, among other things, that 'his most notable lecture was entitled "Sketches of American Policy," and it was published later in pamphlet form. It contains the first definite proposition for a constitution of the United States, as a substitute for the Articles of Confederation, which he criticised in his lecture as imperfect and insufficient.' In that hopelessly indefensible statement Mr. Curtis has embodied a too popular misunderstanding of a vital fact of American constitutional history, in regard to which there should not be the slightest doubt or obscurity. Noah Webster has no claim whatever to the honor attributed to him. It belongs to Pelatiah Webster, who was the original designer or architect of the present Constitution of the United States. He it was who first proposed in a public way the call-

ing of the convention in which the present Constitution was made ; he it was who presented, in thirty compactly printed pages, the first outline of the plan upon which it was formed ; *he it was who gave to the world the path-breaking idea of a Federal Government operating directly upon the citizen and not upon the States as corporations.* To him alone belongs the title of ‘Father of the Constitution,’ a title resting upon written documents accessible to every one. And yet, in the face of such evidence, his very name is known only to a handful of his fellow-countrymen ; no monument has ever been raised to his memory ; few encyclopaedias mention him at all, and such as do pass him by in a way that indicates an utter lack of comprehension of his real importance.”

* * * “There is nothing so marvelous, so unaccountable, in our history as the failure of the American people to do justice to the man who contributed *the one basic idea which made our existing Federal Constitution possible.*”

* * * “His right to immortality rests upon the fact that, in his paper published in 1783, he drew the outlines of the unique fabric created at Philadelphia in 1787, basing it, as he did, upon the epoch-making idea that a federal government *should operate directly upon the citizen and not*

upon the States as corporations. That was Pelatiah Webster's personal contribution to the science of federal government, for which the world had been waiting for more than two thousand years."

* * * * *

"Here at last we have the great thought of which neither Thueydides nor Polybius ever dreamed—the thought of a supreme federal government acting directly upon the subject or citizen, and not upon the cities or States composing the league. About this path-breaking idea (bahnbrechende Idee) there does not hang the perfume either of the spelling-book or the lexicon. It is living, seed-full fruit—Pallas from the brain of Zeus."

* * * * *

"Around that fundamental concept all lesser things cluster."

* * * * *

"When the final analysis is made, it appears that our career as a nation has so far given birth to only three basic political ideas, which may be considered as original contributions to the Science of Politics:

(1) Constitutional Limitations on legislative power.

(2) Interstate citizenship, an invention without a personal author, which originated in the Articles of Confederation.

(3) The *idea* of a supreme federal government, strictly organized, and operating directly on the citizen, and not on the States composing the federation, was the invention, without doubt or cavil, of Pelatiah Webster, a native of Connecticut, an adopted son of Pennsylvania, and a graduate of the University of Yale. Has any one of those great communities ever produced in any other person so great a son? His grandeur is equalled only by the neglect of his fellow-countrymen.”

For the sake of the truth of history and for the purpose of acquitting the patriotic and intelligent people of Pennsylvania and New England of the grave accusation of neglecting an inspired statesman, I have made sufficient research to justify me in challenging the accuracy of these claims and to plead not guilty to the indictment preferred against them of neglecting a man of unequalled greatness.

I hasten to agree with Mr. Taylor that “the one basic idea that made our existing Federal Constitution possible” was “the path-breaking idea of a Federal Government operating directly upon the citizen and not upon the States as corporations,” but I deny that Pelatiah Webster has any just claim to immortality resting upon the fact that he originated that idea, or to put it as

Mr. Taylor does, in a memorial to Congress craving official recognition of the claim on Webster's behalf, that prior to 1783 "no single element of that theory had ever been propounded by anyone," and that "no trace or hint of it is to be found in the prior utterance of any other man."

There had been an effort to bring about a federation of the American Colonies, in which that principle was embodied, as early as 1754, or twenty-nine years before Pelatiah Webster's pamphlet of 1783 was issued. It came about in this way. The Colonies at that time were controlled by a Committee of the Privy Council of England called the Committee of the Lords of Trade and Plantations, and familiarly known as the Lords of Trade.

In 1754, by direction of the Lords of Trade, a convention was called at the city of Albany for the purpose of making sure of the amity of the six Indian nations in the English difficulties with the French in Canada. Seven Colonies sent delegates to this convention. Massachusetts authorized her delegates, in addition to giving attention to the purpose of the call, to "enter into articles of union and confederation for the general defence of his Majesty's subjects and interests in North America as well in time of peace as of war." The Mas-

sachusetts suggestion was discussed at this convention and Benjamin Franklin proposed a plan for a general federation, which was afterwards known as the Albany plan. This plan contained a provision for a Governor-General and a Grand Council, which Council Franklin recommended should convene at Philadelphia, as Philadelphia was the most convenient point, being about twenty days' travel from New Hampshire, the most northern Colony, and twenty days' travel from South Carolina, the most southern Colony. The Council was to be endowed with legislative authority. This authority was to operate directly upon the people of the Colonies, and not upon the Colonies themselves as political units of the federation. The Grand Council was to have the power to appoint executive officers upon the nomination of a Governor-General, to levy and collect taxes, build forts, enlist soldiers, make treaties with the Indians, regulate the Indian trade, issue money, and, in fact, to legislate upon and administer all matters of general concern.

Franklin, in explanation of the plan, said :

“The laws which the President-General and Grand Council are empowered to make *are such only* as shall be necessary for the government of

the settlements; the raising, regulating, and paying soldiers for the general service; the regulating of Indian trade; and laying and collecting the general duties and taxes. They should also have a power to restrain the exportation of provisions to the enemy from any of the Colonies, on particular occasions, in time of war. But it is not intended that they may interfere with the constitution and government of the particular colonies; who are to be left to their own laws, and to lay, levy, and apply their own taxes as before."

These statements as to the purpose of Franklin's plan are apparent from an inspection of the plan itself, and historians have recognized that the Albany plan had the scope I have indicated.

Fiske, in his American Revolution, says: "The Grand Council was to have sole power of legislation in all matters concerning the Colonies as a whole." Speaking further of the plan, he said:

* * * "It would have erected 'a public authority as obligatory in its sphere as the local governments were in their spheres.' In this respect it was much more complete than the scheme of confederation agreed on in Congress in 1777, and it afforded a valuable precedent for the much more elaborate and perfect Federal Constitution of 1787.

It was in its main features a noble scheme, and the great statesman who devised it was already looking forward to the immense growth of the American Union, though he had not yet foreseen the separation of the colonies from their mother-country.”
* * *

I think it cannot be disputed that the Franklin plan contained at least the germ and nucleus of the requisites suggested in Webster’s pamphlet. It certainly contained the idea characterized by Mr. Taylor as the “path-breaking idea” that the Federal power operate directly upon the citizens of the colonies and not upon the colonies themselves, of which idea Mr. Taylor says, “around this fundamental concept all lesser things cluster.”

Richard Frothingham in his “Rise of the Republic of the United States,” speaking of Franklin’s scheme of federation, says:

“The Albany plan was designed to establish for all America one government, based on the consent of the governed, and limited to general purposes, while it left to the local governments their separate functions. It designed to confer on the representatives of the people the power of making laws acting directly on individuals, and appointing officers to execute them, and yet not to interfere with the

execution of the laws operating on the same individuals by the local officers. The authors of this plan intended to erect a public authority as obligatory in its sphere as the local governments were in their spheres. This would have been not a mere league, but a self-sustaining government. The credit of this conception is due to the illustrious Franklin. It was original and American. It was comprehensive and grand. It is not strange that the form devised to carry it out should have been imperfect. The time had not ripened, the way had not been opened, for such a stride in political science as a worthy embodiment of this ideal would have been. It required the discipline and the experience of the succeeding thirty years, the growth of a public opinion for a union, the rise of a sentiment of nationality, the possession of sovereignty, long training of the general mind in polities, and the wisdom of a cluster of the peers of Franklin in intellect, before the conception could be embodied in a worthy form. Divine providence permitted Franklin to share in this experience, to aid in forming the more perfect Union of the Constitution, and to see his countrymen establish it as the law of the land."

I do not seek to detract one iota from the just fame of Pelatiah Webster and I honor the distinguished

jurist, Mr. Taylor, for his disinterested and enthusiastic advocacy of his claims to the discovery of a great political principle.

I gratefully admit his claim that a Pennsylvanian promulgated the greatest single effective federal principle civilization has produced, and I do not detract from New England's share in the honor when I claim the evidence establishes that the man entitled to the credit of its first public announcement was born in Massachusetts and not Connecticut, that his name was Franklin, not Webster.

I will not venture to assert as Frothingham does that this great principle was an original creation of Franklin's brain. It was most likely evolved out of the conditions of the period which demanded some form of nationality and perhaps was the result of the interaction of those mighty intellects which "were not the product of the time but which produced the age in which they lived; its impulse and its purpose."

The Albany plan was promptly and unanimously rejected by the Colonies, doubtless because of this "wholly novel idea" of a central government operating directly upon the citizen. The local feeling was at the time too strong. Franklin fully realized this, and in his plan of federation submitted to Congress in

1775 he abandoned it and expressly provided that the general treasury should be supplied through taxes levied and collected under the laws of the respective colonies.

Speaking of the serious deliberation upon the philosophy of government and the searching examination into the science of polities which marked the *ante* revolutionary period, Burke said, "in no country perhaps in the world was the law so general a study." It was a time in which the writings of Hobbes, Harrington, Sidney, Grotius, Locke, Puffendorf, Montesquieu and Blackstone were eagerly sought after, studied and discussed.

It is not extraordinary therefore that Webster in suggesting a plan of federal union should have recommended the bicameral legislature under which the English-speaking people had been living in substantially its present form since the days of Edward First, and likewise suggested the division of the powers of government into legislative, judicial and executive, as described in Montesquieu's "Spirit of Laws," which had appeared in the early half of the century, and which, upon this topic, was based upon a contemplation of the workings of the English Constitution.

NOTE:

See Fiske's American Revolution, volume 1, page 9.

Frothingham's Rise of the Republic of the U. S., page 148.

Bigelow's Franklin, page 343.

